

Internal Revenue Service
Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: JAN 17 1977

Employer ID Number:
[REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

Refer Reply To:
[REDACTED]

Case Number:
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated in [REDACTED]. Your purposes were amended [REDACTED], to meet the organizational test of IRC 501(c)(3).

Your activities, as stated in your application, are to "educate, coordinate and unify fund raising activities for churches, schools, missions, and other 501(c)(3) organizations (nonprofit organizations)." You state that "The primary fund raising activity that the Foundation will educate these organizations about is [REDACTED]." "The Foundation volunteers will make presentations to the management of nonprofit organizations, educating them about this simple fund raising vehicle. The foundation will also train the nonprofit organization members on how to organize, promote and account for this fund raising program."

You explain that "Grocery, department, drug and other retail stores frequently issue [REDACTED] in minimum order quantities of \$[REDACTED]. Smaller nonprofit organizations can not afford this level of outlay, let alone the level to sponsor multiple stores. Multiple sponsorship can result in significant increases in administrative costs, thereby reducing the fund raising benefit of the program. The Foundation will coordinate and unify the fund raising efforts of the nonprofit organizations by providing "[REDACTED]" and reducing administrative costs by functioning as a clearing house for various stores. The Foundation will acquire the [REDACTED] from participating stores and reissue the [REDACTED] in small quantities. There will be no minimum order quantities. This will provide the nonprofit organization with the ability to offer a variety of [REDACTED] with little or no outlay. Since the Foundation will be acquiring [REDACTED] from the participating stores, the nonprofit organizations will reduce their administrative cost by having to travel to one location versus five or ten to obtain the [REDACTED]."

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You state that "The Foundation will be reimbursed for various operating costs such as insurance, supplies, telephone and wages or contract services for accounting costs. Reimbursements will be obtained through the retention of a small portion of the discount received from the participating stores. All retained discounts in excess of working capital needs will be returned to the participating nonprofit organizations."

In your letter that we received on [REDACTED], you indicated that your organization would have one paid employee. You state that the duties of this employee are to "Tabulate orders, maintain inventory of [REDACTED], track orders, prepare [REDACTED] for pick up, and maintain accounting records."

The projected financial statements submitted with your application show that your only source of revenue is from the sale of [REDACTED]. Your expenses are general office expenses and the salary of the one paid employee. In your first year you have anticipated expenses exceeding revenues. In your second and third years you anticipate no excess in revenues over expenses.

Section 501(c) of the Code describes certain organizations exempt from Federal Income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(c)(1) Primary activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Revenue Ruling 73-164, 1973-1 Cumulative Bulletin 223, holds that an organization which has no significant charitable activity other than the

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[REDACTED] required payment of all its profits over to one or more charitable organizations exempt under IRC 501(c)(3), is operated for the primary purpose of carrying on a trade or business for profit, and is precluded from exemption under section 501(c)(3).

Revenue Ruling 64-182, 1964-1 Cumulative Bulletin 187, holds that an organization which carries out its charitable program by aiding other charitable organizations through contributions and grants to them for their charitable purposes can be exempt under section 501(c)(3) of the Code only where it can be shown to be carrying on a charitable program commensurate in scope with its financial resources through such contributions and grants.

Revenue Ruling 72-369, 1972-2 Cumulative Bulletin 245, held that an organization formed to provide management and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. The ruling states that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element to establish this activity as charitable.

Revenue Ruling 54-305, 1954-2 Cumulative Bulletin 127, provides that a corporation organized and operated for the primary purpose of operating and maintaining a purchasing agency for the benefit of its otherwise unrelated members who are exempt from Federal income tax as charitable organizations, is engaged in business activities which would be unrelated activities if carried on by any one of the tax-exempt organizations, therefore, the corporation is not entitled to exemption under section 101(6) of the Internal Revenue Code (which corresponds to section 501(c)(3) of the 1954 Code).

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945) the Court held that a better business bureau was not exclusively educational or charitable. Its activities were in part aimed at promoting the prosperity and standing of the business community, even though there was also benefit to the public. The Court states that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. The presence of a single nonexempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes. According to Revenue Ruling 74-553, 1974-2 Cumulative Bulletin 168, this rationale applies equally well to any category of charitable purposes under section 501(c)(3) of the Code.

Based on the information submitted, we have concluded that you are not organized and operated exclusively for one or more purposes specified in section 501(c)(3) of the Code.

You stated in your application for exemption that "The primary fund raising activity that the Foundation will educate these organizations about is [REDACTED]." In the letter dated [REDACTED], you state that organizations "are not

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expected to, nor are they required to, obtain their [REDACTED] through the Foundation." However, you stated in your application that "The Foundation will be reimbursed for various operating costs....", and that "Reimbursements will be obtained through the retention of a small portion of the discount received from the participating stores." You provided an example where your organization acquired [REDACTED] worth of [REDACTED] for \$[REDACTED], and then sold the [REDACTED] to nonprofit organizations for \$[REDACTED]. You stated that "The \$[REDACTED] retained will be used to cover expenses." Your financial information indicates that your sole source of revenue is from "retained discounts" from the sale of [REDACTED]. You stated in your application that "The Foundation plans on continuing these activities as its source of funding." Also, the duties of your only paid employee are to "Tabulate orders, maintain inventory of [REDACTED], track orders, prepare [REDACTED] for pick up, and maintain accounting records."

Although you have indicated in your letter that we received on [REDACTED] that the activities of your organization are primarily educational, based on the above, we feel that the primary purpose of your organization is to sell [REDACTED] to non-profit organizations. Your educational activities only serve to further this purpose. Therefore, like the organization in Revenue Ruling 73-164, you have no significant charitable or educational activity.

You have stated that "All retained discounts in excess of working capital needs will be returned to the participating nonprofit organizations." In your first year you have anticipated expenses exceeding revenues. In your second and third years you anticipate no excess in revenues over expenses. Unlike the organization in Revenue Ruling 64-182, you do not carry out a charitable program through contributions and grants which are commensurate in scope with your financial resources.

With the exception of the type of service you provide, you are similar to the organizations described in Revenue Rulings 72-369 and 54-305. Your primary activity is providing a service to tax-exempt organizations for a fee. This activity would be considered an unrelated activity if carried on by any one of the tax-exempt organizations.

As in Better Business Bureau of Washington, D.C., your activities are directed toward nonexempt purposes by more than an insubstantial degree.

Accordingly, you are not entitled to exemption from Federal income tax under section 501(c)(3) of the Code and are required to file income tax returns on Form 1120. Contributions to you are not deductible by donors under section 170 of the Code.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

EIN: [REDACTED]

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CN: [REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



Bobby E. Scott
District Director

Enclosures:
Publication 892
Form 6018

Department of the Treasury Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare in
Duplicate

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption
- ☐ Revocation of exemption, effective _____
- ☐ Modification of exempt status from section 501(c)() to 501(c)(), effective _____
- ☐ Classification as a private foundation (section 509(a)), effective _____
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective _____
- ☐ Classification as an organization described in section 509(a)(), effective _____
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective _____

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date